

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

**‘O’**

Case No. 2:15-cv-03238-CAS (AJWx) Date July 11, 2017

Title DCD PARTNERS, LLC ET AL. V. TRANSAMERICA LIFE  
INSURANCE COMPANY

Present: The Honorable CHRISTINA A. SNYDER

Catherine Jeang

Not Present

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

**Proceedings:** (IN CHAMBERS) - DEFENDANT’S MOTION FOR SUMMARY  
JUDGMENT (Filed January 27, 2017, Dkt. 145)

(IN CHAMBERS) - PLAINTIFFS’ APPLICATION TO FILE  
NOTICE OF ERRATA UNDER SEAL (Filed July 7, 2017,  
Dkt. 234)

(IN CHAMBERS) - PLAINTIFFS’ APPLICATION TO FILE  
SECOND NOTIVE OF ERRATA UNDER SEAL (Filed July 10,  
2017, Dkt. 239)

The Court is in receipt of plaintiffs’ application to file a notice of errata under seal, dkt. 234 (the “Application”), and the redacted notice of errata, dkt. 236. The Court is also in receipt of plaintiffs’ application to file a *supplemental* notice of errata under seal, dkt. 239 (the “Second Application”), and the redacted *second* notice of errata, dkt. 241.

Upon review of the Application and the supporting Declaration of Maxwell D. Herman, the Court hereby finds compelling reason to grant the Application. The Application is hereby **GRANTED**. The following shall be filed under seal:

Document	Portions to be Sealed
Exhibit 2	Pages 23-24, 26-28, 91-93, 119-120, 182
Exhibit 3	Pages 28 and 123
Exhibit 4	Pages 57-61; 70-71; 83; 127-129
Exhibit 45	Page 169
Exhibit 48	Entire document.

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Exhibit 49	Pages 29, 37, 62-63, 66
Exhibit 52	Entire document.

Upon review of the Second Application and the supporting Declaration of Maxwell D. Herman, the Court hereby finds compelling reason to grant the Second Application. The Second Application is hereby **GRANTED**. The following shall be filed under seal:

Document	Portions to be Sealed
Exhibit 2	Rough: pages 23-24, 26-28, 51, 91-93, 119-120, 182, 191- 192 Final: pages 27-29, 30-34, 56-57, 97-100, 126-128, 192- 193, 201-203
Exhibit 3	Rough: pages 28 and 123 Final: pages 30-31 and 128-129
Exhibit 4	Pages 57-61; 70-71; 83; 127-129
Exhibit 45	Page 169
Exhibit 49	Pages 29, 37, 62-63, 66
Exhibit 52	Entire document.

On January 27, 2017, defendant filed a motion for summary judgment. Dkt. 145. On June 17, 2017, plaintiffs filed an opposition to the motion for summary judgment. Dkt. 210. Defendant has already filed its reply, dkt. 230, and the matter is scheduled for oral argument on July 17, 2017.

The Court has reviewed plaintiffs’ notice of errata and plaintiffs’ second notice of errata. Plaintiffs’ first notice of errata is directed at errors resulting from a computer malfunction the day before plaintiffs’ opposition to the motion for summary judgment was due to be filed. Defendant objects to consideration of plaintiffs’ notice of errata because defendant has already filed its reply in support of the summary judgment motion and the notice of errata was filed nearly three weeks after plaintiffs’ opposition. Dkt. 237. Plaintiffs appear to acknowledge that the first notice of errata was filed in order to correct omissions in plaintiffs’ opposition pointed out by defendants in their

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reply. Plaintiffs’ second notice of errata appears to be directed at errors and omissions pointed out in defendant’s objection to the first notice of errata.

Defendant argues that the Court should not consider plaintiff’s first errata because it is an improper attempt to circumvent the prohibition upon filing a sur-reply without leave. Although the second notice of errata was only just filed yesterday, the Court anticipates a similar objection to plaintiffs’ second notice of errata. At bottom, plaintiffs have repeatedly supplemented and altered the substance of their opposition to summary judgment and exhibits thereto each time that defendant points out deficiencies that may affect the merits of its motion for summary judgment. The corrections are minor, but should not have required *two* notice of errata *three weeks* after plaintiffs’ original opposition was filed. To help ensure that the merits of defendant’s summary judgment motion are decided based upon the evidence notwithstanding plaintiffs’ counsel’s errors, the Court will consider the filings in relation to both errata; however, plaintiffs will not be permitted to file additional briefing or errata to their opposition. Defendant requests an opportunity to file further briefing in response to the information, exhibits, and argument contained in the errata because defendant was unable to do so in its reply brief. The Court finds this alternative proposal to be appropriate.

The July 17, 2017 hearing on defendant’s motion for summary judgment is hereby continued to **July 31, 2017, at 10:00 a.m.** Defendant shall file any further briefing, **not to exceed 10 pages**, regarding evidence, information, or arguments raised in plaintiffs’ two errata no later than July 18, 2017. Plaintiffs may not file any further briefing on the present motion for summary judgment.

IT IS SO ORDERED.

Initials of Preparer	<u>00</u>	<u>00</u>
	CMJ	